

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition No.2546 of 2004

Jay Vidyachandra Shah & Ors. .. Petitioners
vs
State of Maharashtra and Anr. .. Respondents

Mr. R.M. Pethe for the petitioners
Mr. P.I. Khemani, AGP, for respondent No.1
Ms Kiran Bhagalia for respondent No.2

with

Writ Petition No.2308 of 2004

Shivaji Baburao Pawar and Ors. ..Petitioners
vs
State of Maharashtra and Anr. ..Respondents

Mr. R.M. Pethe for the petitioners
Mr. P.I. Khemani, AGP, for respondent No.1
Ms R. Pawar with Mr. V.G.Mujumdar for respondent No.2

**CORAM: V.G.PALSHIKAR,Acg C.J. ,
& V.M.KANADE, J.**

DATE: August 10, 2006.

P.C.:-

1. By these petitions, the petitioners have challenged the reservation of land made by the respondent- Planning Authority for economically weaker section. According to these reservations, the owner of the plot can develop it as per his desire, in accordance with law provided, of the constructed area, 15% of it is reserved for economically

weaker section. This aspect of the reservation for economically weaker section is challenged in these petitions.

2. The learned counsel for the petitioners submitted that section 22 of the Maharashtra Regional and Town Planning Act, 1966, hereinafter referred to as the "MRTP Act", provides for various reservations or plans which the Planning Authority can undertake. It speaks of how a development plan is to be made. The learned counsel for the petitioners took us through the entire provisions of section 22, which states that a development plan shall generally indicates the manner in which the use of land in the area of Planning Authority shall be regulated. It also proceeds to provide as to what can be done by the Planning Authority in this regard and illustration Nos (a) to (m), are some things that can be done by the Planning Authority.

3. The submission is that none of these Regulations provided for reservation of land for economically weaker section and, therefore, the order of such reservation is beyond the powers conferred on the Planning Authority

under section 22 of the MRTTP Act. We are unable to accept this submission for the reason that the power conferred by section 22 of the MRTTP Act is to make Development Plan which shall generally indicate the manner in which the use of land in the area of the Planning Authority shall be regulated and for that purpose any of the following matters i.e. Clauses (a) to (m) can be taken into consideration. Clauses (a) to (m) of section 22 are obviously illustrations as to what can be regulated regarding use of the land. Reservation for backward class also is not provided but reservation for such purpose in a particular area under the Planning Authority can be regulated for such purpose. Reservation of land for a particular class of the people to be used for their housing cannot be said to be a purpose which is not germane to the scheme contemplated by section 22. In our opinion, therefore, the reservation of 15% of built up area for use of economically weaker section is not bad in law. Petitions, therefore, must fail.

4. However, we are informed that during the pendency of the petitions, the constructions effected by the

petitioners are complete and they need occupation certificate, which has been withheld by the Corporation because the petitioners have not complied with the requirements of housing for economically weaker section, viz., 15% of their construction. According to the submissions made by the learned counsel for the petitioners the premises reserved for housing the economically weaker section are ready. In our opinion, the interest of justice would be met, if the respondent Corporation is directed to take possession of the said area and allot the same to the economically weaker section only in accordance with the rules framed by the Planning Authority in this regard. Since the construction is complete, it would be futile to continue the premises to be kept as unoccupied. We, therefore, direct the Corporation to issue occupation certificate to the petitioners subject to the condition that the allotment of 15% will be done by the Corporation in accordance with law. If the possession is already handed over by any of the petitioners, then, the Corporation shall proceed to make allotment, which shall be done preferably within a period of one year. With these directions petitions are disposed of.

